

# **Exhibit 31**

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

HERMÈS INTERNATIONAL, et al.,

Plaintiffs,

v.

22 Civ. 384 (JSR)

MASON ROTHSCHILD,

Defendant.

New York, N.Y.  
January 30, 2023  
9:30 a.m.

Before:

HON. JED S. RAKOFF,

District Judge  
-and a Jury-

APPEARANCES

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Opening - Mr. Warshavsky

1 artworks placed on the bags and some of these are  
2 collaborations with outside artists, sometimes inside internal  
3 artists. Mr. Martin will show you other Birkin bags and  
4 provide you some of the descriptions of media. Finally,  
5 Mr. Martin will explain to you why Hermès had concerns with  
6 Mr. Rothschild's MetaBirkins project and why Hermès brought  
7 this lawsuit.

8 After Mr. Martin, you'll hear from Mr. Rothschild  
9 himself. Mr. Rothschild will tell you about his background.  
10 You'll see that Mr. Rothschild's first creative project was  
11 printing the name of art colleges on Champion T-shirts. You'll  
12 hear from Mr. Rothschild that his actions were not authorized  
13 by those schools, such as Parsons which is on your screen. And  
14 you will hear that Parsons at that time sent Mr. Rothschild a  
15 cease and desist letter.

16 Now, you're going to hear that word a few times, cease  
17 and desist letter. That means different things to different  
18 people. Generally, a cease and desist letter is something that  
19 is sent from somebody who thinks they own a right to someone  
20 else who they think may have violated the right, asking them to  
21 cease from that conduct, and to desist from doing it in the  
22 future. That's why it is called, in shorthand, a cease and  
23 desist.

24 You will see that Mr. Rothschild explained to two of  
25 his business associates that he doesn't think people realize

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Opening - Mr. Warshavsky

1 how much you can get away in art by saying "in the style of."  
2 You will hear that Mr. Rothschild's biggest project through at  
3 least the first half of 2021 was called Baby Birkin. That NFT  
4 project was an animation of a fetus growing inside a Birkin.  
5 You will hear that was a financially lucrative project for  
6 Mr. Rothschild.

7 Now, you're also going to hear that Mr. Rothschild  
8 didn't create these or generate these images himself. Instead,  
9 Mr. Rothschild hired someone named Mark Durham, you'll see here  
10 referred to as Mark Design. Mark Design generated the images  
11 for all of Mr. Rothschild's NFT projects through the  
12 MetaBirkins. In fact, you'll hear the MetaBirkins were created  
13 with software called Houdini, the same software used for prior  
14 NFT projects by Mr. Rothschild.

15 You will see communications where Mr. Rothschild  
16 actually asked Mark Design what the project software is, saying  
17 he wanted to learn how to use it. The text you're seeing  
18 occurred while Mark Design was actually generating the images  
19 for the MetaBirkins here. You'll see that Mr. Rothschild, in  
20 trying to entice Mark Design to participate in the MetaBirkins  
21 projects writes, We are sitting on a gold mine. I'm a  
22 marketing king.

23 Now, the name MetaBirkins was not adopted at the  
24 beginning of this project. You'll see during this process,  
25 Mr. Rothschild repeatedly referred to his NFT projects as

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Opening - Mr. Warshavsky

1           You will also see that Mr. Rothschild told his friend  
2 and sometimes collaborator Eric Ramirez that Hermès might  
3 partner with him on the MetaBirkins and that he was  
4 negotiating.

5           You will see that when Mr. Rothschild was exploring a  
6 collaboration for the still-unnamed Birkin project, one  
7 potential collaborator asks whether it is official with Birkin  
8 and Mr. Rothschild responded, "Pushing for it."

9           You will see that in talking to business associates  
10 Mr. Rothschild indicated that he had contacted Vogue, who would  
11 help him with Hermès, and then with the same business  
12 associates said that he planned to work with Sotheby's to  
13 connect him to Hermès.

14           You will see that there are other times that  
15 Mr. Rothschild suggested he was either talking to or  
16 negotiating with Hermès. You will also hear that none of these  
17 discussions or negotiations ever happened, not one.

18           Now, until this time, Mr. Rothschild was calling this  
19 project Birkins. You will see that on October 29, 2021, while  
20 Mark Design was working on completing the images,  
21 Mr. Rothschild took to Twitter and teased one of the bags and  
22 ran a contest. And here he says, "Releasing 50 one-of-a-kind  
23 Birkins of varying rarity. The collection needs a name. Share  
24 this post and reply with your suggestion. Best suggestion gets  
25 gifted a Birkin."

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Opening - Mr. Warshavsky

1 And you will see that various people had submissions.

2 A little later on that same day, October 29, someone  
3 named McKissa responded with seven suggestions. The fourth was  
4 MetaBirkin.

5 Now we know that Mr. Rothschild eventually adopted the  
6 MetaBirkin name. We also know that the MetaBirkin collection  
7 was released about a month later, on December 2, 2021. And on  
8 December 3, 2021, we see McKissa asking Mr. Rothschild whether  
9 she would be getting an NFT because she came up with the name.  
10 Mr. Rothschild will testify that he did not give McKissa the  
11 NFT because he came up with the MetaBirkin name himself. Also  
12 in this contest you will see that another user responded with a  
13 suggestion not your mom's Birkin.

14 And you will see that on Mr. Rothschild's MetaBirkin  
15 website he used the slogan, "Not your mother's Birkin" to  
16 advertise the MetaBirkins on his website. Mr. Rothschild will  
17 also testify that he did not provide that user with any of his  
18 Birkins or MetaBirkins.

19 Mr. Rothschild's promotion also included issuing a  
20 blog post, posting a blog post on November 22, where he  
21 explained that he knew he had to try and recreate the same  
22 exclusivity and demand of Hermès' most famous handbag. His  
23 goal was for MetaBirkins to double as an investment for holders  
24 like the real world holy grail handbag.

25 Mr. Rothschild took to social media, including

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Opening - Mr. Warshavsky

1           And Mr. Rothschild and our team and I am sure everyone  
2           in the courtroom today would very much like to thank you for  
3           being here. We know that you are putting in a lot of effort  
4           and time to serve as juror in this case, and we are grateful  
5           for that.

6           I just would like to show you again the holy object  
7           that brings us all here today in the courtroom.

8           Mr. Warshavsky, may I borrow this bag?

9           MR. WARSHAVSKY: Sure.

10          MR. MILLSAPS: Thank you.

11          Hermès was kind enough to let me borrow this to show  
12          it to you. This is Hermès' most popular product, but not  
13          everyone can get one. Not only is there a waitlist to buy one,  
14          but the cheapest one of these bags is going to set you back  
15          about \$12,000. Some of these bags go for as much as \$200,000.

16          And you heard Mr. Warshavsky say Hermès has sold over  
17          a billion dollars of these bags in the last ten years in the  
18          U.S. alone, about \$100 million worth of these bags every year  
19          for the last ten years.

20          You also heard Mr. Warshavsky say that there are a lot  
21          of cultural references to the Birkin bag in television shows  
22          like Sex and the City, Gilmore Girls, and films and music that  
23          you may have heard from Cardi B or Beyoncé.

24          That is because -- and Hermès is very proud of this --  
25          the name Birkin has transcended its status as a mere trademark

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Opening - Mr. Warshavsky

1 evidence that Mr. Rothschild ever told anyone that MetaBirkins  
2 came from Hermès, because he wanted the credit for his own  
3 artwork.

4 Fact three: Consumers who pay tens of thousands of  
5 dollars for luxury handbags like Birkin bags or NFT art were  
6 not confused about where MetaBirkins came from. Hermès own  
7 evidence is going to show this to you.

8 Hermès is going to try to make a big deal out of the  
9 fact that Mr. Rothschild hoped to make money with MetaBirkins.  
10 They are going make a big deal out of the fact that he put a  
11 lot of effort into trying to pump up the price and the  
12 excitement for his MetaBirkins art. They are going to make a  
13 big deal about the fact that he told his associate that he  
14 hoped he could get Hermès to collaborate with him.

15 Mr. Rothschild doesn't dispute any of that. It is all  
16 true. It is perfectly legal for people to make money with  
17 their art. In fact, the First Amendment of our Constitution  
18 protects that right for every American. And you will hear from  
19 Hermès' own witness that it is not unusual for artists to  
20 approach Hermès to pitch a collaboration with them, because  
21 they want to work with Hermès.

22 We are here today because trademark rights are limited  
23 by the First Amendment, which protects artistic creations like  
24 Mr. Rothschild's MetaBirkins. The First Amendment's guarantee  
25 of freedom of speech and expression protects the right for any



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Opening - Mr. Warshavsky

1 of us to depict and comment on the things that we see in the  
2 world around us, including the trademarked products and brands  
3 that bombard us everywhere we look, especially products that  
4 have become significantly and widely discussed symbols in our  
5 culture, like the Birkin bag.

6 Also -- and I will talk more about this later --  
7 nobody was confused about what they were buying when they  
8 bought the MetaBirkins NFTs and artworks. I would like to talk  
9 to you for a minute about Mr. Rothschild.

10 Who is Mason Rothschild? During this trial you are  
11 going to learn a good bit about Mr. Rothschild. I think that  
12 you will learn that there is a lot to like about him. But you  
13 will see some of Mr. Rothschild's flaws as well else a human  
14 being as you can see sitting here. You will learn that  
15 Mr. Rothschild is a clever, passionate, sometimes even funny  
16 guy who has lots of ideas, lots of ambition, and he works hard  
17 to bring his ideas into reality.

18 Like many people, he isn't just one thing. He is an  
19 artist, he is an entrepreneur, he's a businessman, he is a  
20 clever marketing guy. He's also a fiance and a devoted dog  
21 dad.

22 You will see that he cares a lot about using his art  
23 to draw attention to social issues that he cares about. You  
24 will also learn that he sometimes exaggerates and embellishes  
25 the truth, especially which he's promoting himself and his

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Opening - Mr. Warshavsky

1 projects.

2 But you will see from the evidence that Mr. Rothschild  
3 is straight when it comes to the important things. Like paying  
4 back around a \$100,000 investment when the deal fell through.

5 You are going to learn some more things about  
6 Mr. Rothschild that will help you understand what shaped him  
7 and his artistic outlook. Despite his name, Mr. Rothschild was  
8 not handed anything. His birth name is Sonny Alexander  
9 Estebal, but he adopted the name Mason Rothschild when he was a  
10 teenager for reasons that you will hear him explain.

11 He is a first-generation American, born in Pasadena  
12 and raised in San Mateo, California. His mom came to the U.S.  
13 from the Philippines; his dad came from Colombia.

14 He graduated from high school at the age of 16, and he  
15 took classes at a local community college for a year and some  
16 online classes at the University of San Francisco in business  
17 and marketing. But Mr. Rothschild never finished college.  
18 He's mostly self-taught in both business and art.

19 On the business side, Mr. Rothschild started out  
20 working in retail, first for a couple of small streetwear  
21 brands and then for bigger companies in the luxury fashion  
22 space, like Yves Saint Laurent and Dior. He wanted to get into  
23 other things while he was working in retail, so he started  
24 doing some consulting work around digital marketing and social  
25 media for various companies.